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**Appropriations and Stem Cell Research
Arlen Specter's Senate Legacy**

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“I am returning herewith without my approval H.R. 810, the ‘Stem Cell Research Enhancement Act of 2005.’”¹ On July 20, 2006, President George W. Bush issued the first veto of his presidency; a bill sent to him by a Republican-controlled Congress. Less than a year later Bush exercised his veto power again on S. 5, the Stem Cell Research Enhancement Act of 2007. “Once again,” Bush wrote, “the Congress has sent me legislation that would compel American taxpayers, for the first time in our history, to support the deliberate destruction of human embryos.”² Of the twelve vetoes exercised by Bush, two concerned stem cell policy.

Pennsylvania Republican Senator Arlen Specter sat at the center of battles over stem cell research. Focusing on Specter’s efforts allows sustained exploration of policy entrepreneurship in the Senate. Building on Fenno’s seminal work on Arlen Specter,³ which focused mostly on Specter’s first term in office. Specter’s early work on criminal justice policy helped to prepare him for the weighty work involved in the stem cell debate. However, it was his ascendance on the Senate Appropriations Committee, and his position on the Labor, Health, and Human Services subcommittee in particular, that allowed him to become a leader on the stem cell issue. Specter’s work on the Judiciary Committee stereotyped Specter as a “show horse,” his work on stem cell research highlights his “workhorse” qualities.

I begin with an overview of agenda setting and policy entrepreneurship in Congress. The purpose of the discussion is to place Senator Arlen Specter’s legislative activities in a theoretical context. I then turn to the politics and policy that shaped the debate surrounding stem cell research. In particular, I demonstrate how the development of stem cell policy necessarily tiptoed through the minefield of abortion politics. I then discuss Senator Specter’s involvement in shaping stem cell research policy by focusing on several vignettes where his involvement illustrates the important role of the

¹ George W. Bush, Veto Message on H.R. 810, US Government Printing Office, July 20, 2006.

² George W. Bush, Veto—S. 5, US Government Printing Office, June 20, 2007.

³ Richard F. Fenno, Jr., *Learning to Legislate: The Senate Education of Arlen Specter*. Washington: CQ Press, 1991.

political entrepreneur. Despite what sometimes appears as “failure,” we gain insight into the role of Specter as a policy entrepreneur and this role in shaping public policy.

This work contributes to the literature on Congress and public policy in several ways. Making extensive use of newly available archival material I contribute to our historical understanding of stem cell policy and its relationship to abortion policy. Focusing on Senator Arlen Specter allows us to examine how policy leaders learn and adapt to political and institutional change to realize their policy goals. It also expands our understanding of policy entrepreneurs. Many students of legislative entrepreneurship focus on legislative accomplishment—success. Specter did not pass any landmark legislation into law related to stem cell research. This study addresses a blind spot in the study of legislative entrepreneurs; the skills policy leaders use to prevent legislation from becoming law.

Policy Agendas and Political Entrepreneurs

Congress is routinely confronted with a barrage of policy issues. Setting the congressional policy agenda determines which issues receive attention and which do not.⁴ Congress has limited resources, especially time, to address the almost-infinite number of issues that arise. Some challenges recur annually, like creating a budget and appropriating authorized funds. Other issues arise routinely on a longer timescale are sporadic, like reauthorizing expiring programs. These two types of activities tend to dominate the policy agenda. What happens in Congress’s “free time,” the “discretionary agenda,” is shaped by external political events (e.g., crises, discoveries, disasters) and the efforts of policy entrepreneurs.⁵ Policy entrepreneurs have multiple roles: they “advocate new ideas and develop

⁴ See Jack L. Walker, "Performance Gaps, Policy Research, and Political Entrepreneurs." *Policy Studies Journal* 3 (1) 12-16, 1974, and "Setting the Agenda in the U.S. Senate: A Theory of Problem Selection." *British Journal of Political Science* (October):423-45, 1977.

⁵ Nancy C. Roberts and Paula J. King provide a useful typology of public entrepreneurs. They identify four types: *political entrepreneurs* hold elected positions in government; *executive entrepreneurs* hold appointed positions in government; *bureaucratic entrepreneurs* hold formal positions in government, but not leadership positions; and, *policy entrepreneurs* work outside of government to move ideas into public sector decision arenas. "Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process," *Journal of Public Administration Research and Theory*, 1 (2) p. 147-175, 1991.

proposals; define and reframe problems; specify policy alternative; broker the ideas among the many policy actors; mobilize public opinion; help set the decision-making agenda.”⁶ Political entrepreneurs are elected officials who engage in these activities in the hope that they can advance their policy alternatives onto the Congress’s discretionary agenda.

[SEE FIGURE 1]

John Kingdon argues that Congress’s policy agenda is shaped by political entrepreneurs operating in the context of several “streams.” The “problem stream” is the universe of political problems facing Congress—it is the “barrage” of political problems that Congress *might* address. The “policy stream” is the universe of existing and potential policy solutions available that address the problem stream. The “political stream” is the universe of political actors and interests vying for Congress’s attention. When these three streams intersect a “policy window,” an opportunity for action, can appear, that is, an issue can find its way onto the congressional policy agenda. Political entrepreneurs are positioned well to take advantage of policy windows by taking advantage of changes in the problem stream that provide the leverage to push policies onto the political agenda. According to Kingdon, the most “successful entrepreneurs are persistent.”⁷

[SEE FIGURE 2]

There is room here to emphasize the role of “fortune,” the universe of events over which humans have little control. Issues often find their way onto the policy agenda due to unforeseen, and sometimes unforeseeable, circumstances. The successful political entrepreneur understands that when political fortune favors action, they must be prepared to seize on changes in one or more streams that might create an opportunity to pry open a policy window. Each policy entrepreneur operating within a policy window is empowered and constrained by the political context and their personal resources,

⁶ Roberts and King, “Policy Entrepreneurs,” p 148.

⁷ John Kingdon, *Agendas, Alternative, and Public Policies*, Boston: Little, Brown, 1984.

which can allow and limit their ability to take advantage of a policy window (see Figure 2). They also find themselves in competition with political entrepreneurs with opposing agendas.

Political entrepreneurs do not appear from whole cloth. Arlen Specter was not a born political entrepreneur. Richard Fenno's classic treatment of Arlen Specter during his first term in the Senate emphasizes the role that *learning* plays in the development of a political entrepreneur. Specter relates several seminal learning experiences in his oral history that illustrate how he learned to navigate the social and institutional opportunities available in the Senate.⁸ Albert Bandura and others posit that individual behavior should be understood within a social context, as a reflection of the social fabric in which individuals are embedded. Institutions shape individuals and, in turn, individuals shape the institutions to which they belong.⁹ Bandura argues that "the environment is only a potentiality, not a fixed property that inevitably impinges upon individuals and to which their behavior eventually adapts. Behavior partly creates the environment and the resultant environment, in turn, influences the behavior. In this two-way causal process, the environment is just as influenceable as the behavior it controls."¹⁰ Political entrepreneurs differ in their ability to master the conditions in which they find themselves.

Background: The Problem Stream

Roe v. Wade, the landmark 1973 Supreme Court decision, held that state laws criminalizing abortion except when medically necessary are an unconstitutional invasion of privacy. *Roe* sent a

⁸ Brian Lockman and Francine Shertzer, *Arlen Specter: An Oral History*. Camp Hill, PA: The Pennsylvania Cable Network, 2017, p. 117-122

⁹ I do not contend that this is a unique view. In political science, Lawrence C. Dodd incorporates Social Learning Theory into his theory of congressional change. See, for instance, "Re-Envisioning Congress: Theoretical Perspectives on Congressional Change—2004" in Lawrence C. Dodd and Bruce I. Oppenheimer, *Congress Reconsidered*, Eighth Edition (Washington, DC: Congressional Quarterly Press, 2005). Richard Fenno highlights the importance of learning in *Learning to Legislate: The Senate Education of Arlen Specter* (Washington, DC: Congressional Quarterly Press, 1991) and *Learning to Govern: An Institutional View of the 104th Congress* (Washington, DC: Brookings Institution Press, 1997). Frisch and Kelly highlight institutional learning in "Bob Michel and the Politics of Appropriations," Frank H. Mackaman and Sean Q Kelly, Eds., *Leading the Republican House Minority: The Congressional Career of Robert H. Michel* (Lawrence: University of Kansas Press, 2019).

¹⁰ Albert Bandura, *Social Learning Theory*, 1971, 40.

shockwave through American politics that still reverberates in our national politics. It upset the policy equilibrium premised on states' control of abortion policy. The court's decision in *Roe* thrusting the most contentious social issue in a generation into an unsuspecting and unprepared Congress.¹¹ Post-*Roe*, abortion became inextricably woven into the fabric of national policymaking and electoral politics, colliding with policy and politics in unexpected ways and with unpredictable consequences.

Pro-life forces immediately responded to *Roe*, lobbying Congress to pass a Constitutional Amendment nullifying the Court's decision. The initial and arguably most significant enduring victory of the nascent national pro-life movement, came in the form of a "limitation rider"—the "Hyde Amendment"—attached to a bill appropriating funds for the Department of Health, Education, and Welfare (HEW)¹² for the 1977 Fiscal Year.¹³ Appropriations limitation riders define the activities on which that the executive branch can spend appropriated funds. Because they limit expenditures during a specific fiscal year, limitation riders must be renewed annually during the appropriations cycle, each side proposing additional language limiting or expanding abortion rights with additional riders (e.g., abortion non-discrimination, criminal penalties for physicians who conduct abortions). In the wake of the Hyde Amendment and its survival of a Supreme Court challenge,¹⁴ anti-abortion conservatives sought to use limitation riders to advance the anti-abortion cause. Similar Hyde-like riders limited abortion-related expenditures for the District of Columbia, the US Military, federal employees, and Peace Corps volunteers.

¹¹ The historical import of the decision, authored by Justice Harry Blackmun, was not lost on his colleagues. Writing to Blackmun's wife, Dottie, Justice Lewis Powell said "Dottie, Harry has written an historic opinion, which I was proud to join. His statement from the bench this morning also was outstanding. I am glad you were here. Lewis." Harry Blackmun Papers, Library of Congress, Box 151, *Roe v. Wade* (2 of 8), Folder 3. "Memo from Lewis Powell to Dottie Blackmun, January 22, 1973.

¹² HEW is now known as the Department of Health and Human Services (HHS).

¹³ Frisch and Kelly (2017) offer a comprehensive political history of the Hyde Amendment.

¹⁴ In *Harris v. McRae*, 448 US 297 (1980) Supreme Court ruled that there was an individual right to abortion, but that the government could refuse to pay for abortions.

Within days of his inauguration, Bill Clinton signed a directive allowing the use of fetal tissue in medical research.¹⁵ The same day Clinton rescinded several other George H.W. Bush-era restrictions related to abortion and put FDA approval of the drug RU-486 on a fast track. In his public comments, Clinton stated, "We must free science and medicine from the grasp of politics, and give all Americans access to the very latest and best medical treatments." He continued, "Today, I am directing Secretary of Health and Human Services Shalala, immediately to lift the moratorium on federal funding for research involving transplantation of fetal tissue."¹⁶ In 1994 the National Institutes of Health convened a Human Embryo Research Panel to evaluate whether, and under what conditions, human embryo research should be federally funded. The NIH Panel concluded that unused gametes and embryos from fertility procedures like *in vitro* fertilization should be allowed consistent with the informed consent of the donor. They also approved the creation of embryos for research purposes.¹⁷ President Clinton supported the use of donated tissue but balked at the creation of embryos for research. Anti-abortion lawmakers and interest groups roundly criticized the use of fetal tissue under any circumstances, opening a new battlefield for pro-choice and anti-abortion advocates.

With the 104th Congress, divided government returned following a two-year hiatus. The "Republican Revolution" put the GOP in control of the House and Senate. Interpreting the 1994 election as a mandate for conservative policies, energized House Republicans sensed an opportunity to impose their will on a weakened Clinton Presidency, especially regarding spending priorities and Clinton's pro-choice policies. Differences over spending priorities and levels caused funding gaps, and partial government shutdowns, between November 13-19, 1995 and December 15, 1995, through January 6,

¹⁵ 58 Federal Register 7457 (1993).

¹⁶ "Remarks on Signing Memorandums on Medical Research and Reproductive health and an exchange with Reports." *Public Papers of the President of the United States: William J. Clinton, 1993*, p. 7.

¹⁷ National Institutes of Health, *Report of the Human Embryo Research Panel*, Volume 1. September 1994.

1996.¹⁸ Before the first shutdown, two appropriations bills were passed and signed into law. Between the shutdowns, Congress and the president agreed on four additional appropriation bills. The remaining bills included appropriations for Labor, Health, and Human Services, perhaps the most contentious among the remaining measures. A continuing resolution passed on January 26, 1996, returned 800,000 furloughed federal employees to work, created a framework for balanced budget talks between Congress and the White House, and included language limiting government expenditures for embryo research.

The Republican takeover of the House created New Speaker Newt Gingrich (R-GA) catapulted Bob Livingston (R-LA), only the third most senior Republican on the House Appropriations Committee (HAC), to Chair the HAC. Like Gingrich, Livingston was a “movement conservative” with strong anti-abortion credentials. Gingrich, who sought to centralize power in the Speaker’s Office, could count on Livingston to promote conservative social and fiscal policies. Where once members of the Appropriations Committee were chosen because they proved themselves to be “responsible legislators” (Fenno 1966), assignments to the committee were now subject to an abortion litmus test. A Republican staffer familiar with the committee assignment process commented: “we requested members’ right to life scores and that way we could make sure that if we put them on a committee that had jurisdiction over abortion, we knew that we could keep a pro-life majority...”¹⁹ A memo in the papers of former Appropriations Committee Chair Livingston substantiates this assertion. Livingston lists 13 members seeking assignment to the committee in the 104th Congress. Livingston noted with their abortion stance by hand next to each name.²⁰

¹⁸ James V. Saturno, “Federal Funding Gaps: A Brief Overview.” Congressional Research Service. September 13, 2017.

¹⁹ Elizabeth Ann Oldmixon, *Uncompromising Positions: God, Sex, and the US House of Representatives*. (Washington: Georgetown University Press, 177).

²⁰ Memo dated November 18, 1996. Robert Livingston Congressional Papers, Tulane University. Unprocessed collection.

Arkansas Republican Jay Dickey and Mississippi Republican Roger Wicker were elected to the House in 1994 as part of the Republican wave election. Ignoring the past practice of both parties refraining from assigning first-term members to crucial committees like Appropriations, Gingrich appointed 11 Republicans to the Appropriations Committee, seven of whom were newly elected. Dickey and Wicker replaced Democratic representatives.²¹ Wicker, who cut his teeth as a staffer for Trent Lott on the House Rules Committee, and Dickey²² landed assignments to the Labor, Health, and Human Services subcommittee of the HAC, the frontline for battles over abortion and abortion-related policies. Together Dickey and Wicker successfully inserted a limitation rider into the Omnibus Appropriations bill limiting funding for the creation or destruction of embryos to conduct research involving fetal tissue.²³

Dickey-Wicker, as the limitation quickly became known, only limited expenditures for federally-funded research, it did not apply to privately-funded research. In November 1998 the news came that James Thompson, a researcher at the University of Wisconsin, used private funding to isolate the first human stem cell line from fetal tissue. Embryonic Stem Cells hold extraordinary promise because they can develop into any of the roughly 200 different cell types in the human body. Arguing that stem cells were not embryos, a Department of Health and Human Services legal opinion authored by Harriett Rabb concluded that federal appropriations could be used to fund embryonic stem cells that were the result

²¹ Jay Dickey replaced 7-term incumbent Democrat Beryl Anthony, who lost the Democratic primary to Arkansas Secretary of State Bill McCuen, who subsequently was defeated by Dickey. Wicker replaced the retiring past-Chairman of the HAC, Jaime Whitten

²² Ironically, Dickey died in 2017 after battling Parkinson's, a disease many speculate could be treated using embryonic stem cells which can be derived from a human zygote.

²³ P.L. 104-208 Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997. September 30, 1996.

Sec. 512. (a) None of the funds made available by this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or
(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b))

(b) For purposes of this section, the term "human embryo or embryos" include any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes.

of privately funded fetal tissue research.²⁴ Revised funding guidelines were issued in August 2000, months before the election of Republican George W. Bush, who ordered a review of the Rabb finding and the new HHS guidelines.

George W. Bush was elected with strong support from evangelical voters. In an interview for the PBS documentary series *Frontline*, Dallas Morning News reporter Wayne Slater opined, “I don’t think any political president ever in the history of this country was able to harness and assemble the kind of organized and consistent evangelical religious support from the political side as George Bush. . . . One of the reasons that George Bush has the support of the evangelical community is because he’s a true believer. He is one of them, and they see it.”²⁵ Evangelical icon Jerry Falwell, who referred to evangelicals “as powerful a voting bloc as there is,” said of the election of Bush that “...we observed a ‘slam dunk’ as the Church of Jesus Christ made the difference in initiating the return of this nation to moral sanity and the Judeo-Christian ethic.”²⁶

Whether evangelicals put George W. Bush in the White House or not,²⁷ many in the Bush White House believed that evangelicals were an important component of the Bush electoral coalition and failing to promote conservative social policies, especially abortion-related policy, would doom Bush’s reelection chances. Nightlight Christian Adoptions—a group focused on embryo adoptions—filed a federal lawsuit challenging the Clinton policy on research funding. On the other hand, 80 Nobel

²⁴ “The statutory prohibition on the use of funds appropriated to HHS for human embryo research would not apply to research utilizing human pluripotent stem cells because such cells are not a human embryo within the statutory definition.” Harriet S. Rabb memo to Harold Varmus, Director of NIH, “Federal Funding for Research Involving Human Pluripotent Stem Cells.” January 15, 1999. US National Library of Medicine, Harold Varmus Papers, Basic Science and Congressional Politics: NIH Director, 1993-1999, Box 8, Folder 4.

²⁵ Wayne Slater, *Frontline: The Jesus Factor*, 2004. (Accessed January 2019). Available: <https://www.pbs.org/wgbh/pages/frontline/shows/jesus/interviews/slater.html>

²⁶ Falwell, Jerry. 2004. Christian voters triumph over Hollywood left. *WorldNetDaily*, November 6, 2004. (Accessed January 2019). Available: www.wnd.com/2004/11/27422/

²⁷ Geoffrey C. Layman and Laura S. Hussey, “George W. Bush and the Evangelicals: Religious Commitment and Partisan Change among Evangelical Protestants, 1960–2004,” in David E. Campbell Editor, *A Matter of Faith: Religion in the 2004 Presidential Election*. Washington: Brookings Institution, 2007.

Laureates signed a letter arguing for federal funding of embryonic stem cells.²⁸ Secretary of Health and Human Services, Tommy Thompson, who was conducting a review of federal funding compounded the pressure expressing in a congressional hearing a general level of support for the Clinton policy.

Deputy Assistant to the President for Domestic Policy, Jay P. Lefkowitz, was one of the president's closest advisors on abortion-related policy, especially stem cell research. "I led a team of lawyers in our own evaluation of the Dickey Amendment. We decided that while spending federal dollars on such research might violate the spirit of the amendment, it would not violate the letter. Responsibility for adjudicating the divide between spirit and letter was necessarily the President's as the nation's chief executive officer."²⁹

Publicly, the Bush White House sought to convince the public that their approach to embryonic stem cell research respected science. Their goal, they claimed, was to develop a policy allowing science to move forward within an acceptable moral framework. Lefkowitz claims that "Bush personally set in motion a highly unusual process of deliberation inside the White House. The process combined philosophical and scientific research with investigations into both the morality and the practicality of various policy options."³⁰ According to Lefkowitz, the president anguished over the decision, talking at length with scientists, ethicists, patient groups, and religious leaders. Lefkowitz files on stem cell research betray a heavy bias toward readings, letters, and memos that supported the belief that embryos represent human life and that isolating stem cells destroys human life. Research material also strongly favored utilizing alternative sources of stem cells, like adult stem cells and stem cells present in umbilical cord blood.

²⁸ Rick Weiss, "Nobel Laureates Back Stem Cell Research, Washington Post, February 22, 2001.

²⁹ Jay P. Lefkowitz, "Stem Cells and the President—An Inside Account," *Commentary*, January 2008. Accessed January 2019. Available: <https://www.commentarymagazine.com/articles/stem-cells-and-the-president-an-inside-account/>

³⁰ Lefkowitz, "Stem Cells"

On April 6, 2001, Anne Phelps prepared a memo for the president on the policy status quo in the absence of the Clinton policy, "...private funds must be used for the extraction that *kills the embryo*, and public funds could be used for embryonic stem cell research."³¹ Phelps' description belies her normative orientation—stem cell research kills embryos. Phelps' memo makes two recommendations: "We recommend issuing a temporary halt to the current review process and the accepting of new applications before the April 10 public announcement." A hard stop on the Clinton policy. Next, "Based on our review of the legal, scientific, and ethical issues regarding federal funding for embryonic stem cell research, we recommend moving forward with a permanent ban." However, Phelps warns, "Because this will result in a significant public outcry from the media and supporters of embryonic stem cell research, we recommend allowing some time for discussions with the relevant constituencies, particularly members of Congress, and preparation of a public announcement. We recommend making the announcement in May or early June."³²

By June, Lefkowitz delivered a memo to Bush outlining options for the president's policy response: "1) permitting federal funding, but issuing stronger NIH guidelines; 2) permitting federal funding with strong NIH guidelines until a sufficient number of stem cell lines were created; 3) permitting federal funding with strong NIH guidelines, but only for research using existing stem cell lines; 4) adding federal oversight to any of the previous options; and 5) adding a robust adult stem cell initiative to any of the options above."³³ The archival record supports a view that the stem cell decision was made early on in the administration and that Bush insiders tried to create a rationale for a predetermined outcome.

³¹ Anne Phelps, Memo for the President, "Recommendations on Embryonic Stem Cell Research," April 6, 2001. George W. Bush Library, Jay Lefkowitz, Box 11. *Emphasis added.*

³² Anne Phelps, "Recommendations"

³³ Jay Lefkowitz, memo to the president, "Embryonic Stem Cell Research," June 27, 2001. George W. Bush Library, Jay Lefkowitz, Box 11.

August 9, 2001, President Bush made a nationally televised speech in primetime outlining his stem cell policy.³⁴ He sought to frame his decision by suggesting support for science—“I’m a strong supporter of science and technology and believe they have the potential for incredible good, to improve lives, to save life, to conquer disease—and as a person of deep religious faith—“I also believe human life is a sacred gift from our Creator. I worry about a culture that devalues life and believe as your President I have an important obligation to foster and encourage respect for life.” Then, seemingly cutting through this ethical Gordian knot, he proclaimed that the 60 stem cell lines already developed worldwide could receive funding. While the development and use of new embryonic cell lines would not be federally funded, he continued: “I have concluded that we should allow Federal funds to be used for research on these existing stem cell lines, where the life and death decision has already been made.” He also expressed support for an alternative source of stem cells, “I also believe that great scientific progress can be made through aggressive Federal funding of research on umbilical cord, placenta, adult, and animal stem cells which do not involve the same moral dilemma.”

In the days that followed, the White House mounted a public campaign to build public support for the president’s position. The president’s weekly radio address dealt with his decision and the president published a *New York Times* op-ed titled “Stem Cell Science and the Preservation of Life.”³⁵ Adopting a rhetorical approach that would later be used to justify the war in Iraq,³⁶ Bush pitted an Aldous Huxley-inspired dystopian vision against his compromise: “But one need not be pro-life to be disturbed by the prospect of fetal farming or cloning to provide spare human parts. Most Americans share a belief that human life should not be reduced to a tool or a means.” He continues, “Stem cell research takes place on a slippery slope of moral concern where much biomedical research is and will be

³⁴ George W. Bush, “Address to the Nation on Stem Cell Research,” August 9, 2001.

³⁵ George W. Bush, “Stem Cell Science and the Preservation of Life,” *New York Times*, August 12, 2001, WK 13.

³⁶ Some readers will remember that the war in Iraq was premised on waiting for international inspectors to produce evidence that Saddam Hussein possessed weapons of mass destruction or the threat of mass annihilation: “We don’t want the smoking gun to be a mushroom cloud.”

conducted. We must keep our ethical footing. Government has a clear duty to promote scientific discovery -- and a duty to define certain boundaries.”

No one in the president’s inner-circle or the president believed that this “compromise” decision would satisfy either the president’s conservative supporters or supporters of embryonic stem cell research. Richard Doerflinger, a spokesman for the US Conference of Catholic Bishops, asked “His moral principle seems to be, if the killing has already been done, we can fund this research...Where is the moral limit? On what basis will the president say no? I think it is an untenable and unstable policy.”³⁷ Research scientists, on the other hand, challenged the Bush Administration’s estimate of 60 viable embryonic stem cell lines, expressing doubts that 60 lines would provide enough material to adequately assess the therapeutic prospects for embryonic stem cells.

Pressuring the White House: The Thompson Imbroglia

As part of the Bush Administration’s review of funding for embryonic stem cell research, Health and Human Services Secretary Tommy Thompson requested a summary report on the status and promise of research from the directors of the National Institutes of Health. In preparation for a May hearing for the Fiscal Year 2002 Labor-H Appropriations bill, Senator Specter likewise solicited the views of directors of the National Institutes of Health on the promise of embryonic stem cells for the diseases. In his letter to the Directors Specter asked them to address five areas of interest. I would like to know: (1) what research has already been conducted and is being conducted using stem cells, (2) what research breakthroughs show promise for the treatment of disease, (3) how you see stem cell research being applied in future research, (4) what particular diseases are most conducive to stem cell treatment, and (5) when we might see treatments and/or cures accruing from stem cell research. I would also like you to discuss how a ban on Federal funding for stem cell research would affect current and future

³⁷ Laurie Goodstein, “Abortion Foes Split Over Plan On Stem Cells,” New York Times, August 12, 2001, p. 26

research.”³⁸ Despite his request that the letters be available two days before the May 23rd hearing, the letters arrived the afternoon before the hearing. Later, Specter and his staff discovered that “the letters had been altered, and that portions supportive embryonic stem cell research had been deleted.”³⁹

On June 27, 2001, the *New York Times* published an article relating the details of the results of the NIH report. In the wake of the report, Senators Specter and Harkin—the Ranking Member and Chair of the Senate Labor-H Subcommittee, respectively—requested a copy of the report noting “It is particularly troubling that several requests made by our respective staff to obtain a copy of the report, titled “Stem Cells: Scientific Progress and Future Research Directions,” were denied.”⁴⁰ Behind the scenes, Specter’s staff indicated to HHS staff that the subcommittee might subpoena the report. Under pressure, staff from the subcommittee were allowed to read the report at HHS offices, and take notes by hand, but HHS refused to release the report to the subcommittee.

When Labor-H staff gained access to the report, they discovered that “A total of 21 deletions were made in 10 of the 15 letters submitted to the Subcommittee by the Department. Some of the deletions made by the agency were substantive.” In a memo to Senator Specter, the staff identified four areas in which changes were made: “1) How a ban on Federal funding for stem cell research would affect current and future research. 2) The advantages of embryonic stem cells over adult stem cells, and the need to compare the two. 3) Discussion of embryonic stem cell research in the private sector. 4) Concluding statements regarding the potential of embryonic stem cells.”⁴¹

³⁸ Senator Specter’s office sent the same letter to the fifteen Institute Directors on May 2, 2001 Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Health Care Group, Box 20, Folder 27, “Stem Cell Research Support, 1999-2005.”

³⁹ Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Legislative Assistant Files, Box 112, Folder John Meyers, Subcommittee Hearing on the Promise of Stem Cell Research, 2010, “Stem Cell History.”

⁴⁰ Letter to the Honorable Tommy Thompson from Senators Arlen Specter and Tom Harkin, June 29, 2001 Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Health Care Group, Box 20, Folder 27, “Stem Cell Research Support, 1999-2005.”

⁴¹ Memo to Senator Specter from Bettilou/Sudip, “Stem Cell letters,” July 3, 2001.

Unsatisfied with the response of HHS to their repeated requests to gain full access to the report, Specter and his office went on the offensive, threatening to issue a press release if HHS did not share the report. When their demand went unanswered, Specter's office issued a statement on July 6, 2001, in which Specter challenged what he saw as an affront to the subcommittee and the public, and possibly an act of scientific censorship. "These efforts by the Department of Health and Human Services to restrict access by the Subcommittee- and really the American people- raise concerns that the Subcommittee may still not be getting all the facts which we call upon the Department of Health and Human Services to disclose." Despite the newsworthiness of a Republican Senator criticizing a Republican appointee on an issue garnering immense media attention, the Specter press release went unnoted in major press outlets.

With no response to his press release and still fuming, on July 11, 2001, Specter fired off an angry letter to Secretary Thompson. "It is my view," Specter wrote, "that our Subcommittee, or, at a minimum, the Chairman and Ranking Member, have an absolute right to that stem cell report." Specter continued, "It is insufficient for me to be limited to having my staffer go to your office to read the report. I want to read it myself, and I cannot reasonably come to your Department to read it." Furthermore, having uncovered how the NIH Directors' letters were altered before his May Labor-H hearing, Specter dressed down the Secretary: "I also want you to know that I am displeased with the censoring by your Department of the responses by the NIH Institute Directors in answer to my May 4, 2001 letter posing specific questions regarding stem cell research. Those full letters should have been transmitted to the Subcommittee promptly, and we should not have had the delays or the necessity to push you for these letters."⁴²

⁴² Letter to the Honorable Tommy Thompson from Arlen Specter, July 11, 2001, Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Health Care Group, Box 20, Folder 27, "Stem Cell Research Support, 1999-2005."

On July 17, 2001, at 9:45 AM, one day before the next Labor-H hearing, Specter's office received the report. "I consider the response by you and your Department to my letter of July 11, 2001, and the late availability of this report to be absolutely insulting." Specter wrote to Secretary Thompson. Noting that Thompson declined an invitation to appear at the subcommittee hearing the day, Specter wrote Thompson to give him "advance notice, in the event you wish to make some response, that I intend to comment on your Department's conduct." Specter openly criticized the Department and the Bush Administration in his opening statement at the subcommittee hearing the next day: "We may not agree with the administration, but Congress has a right to the facts. And we ought not be getting censored information...We have a constitutional government in America, and we have status in the Congress to find out the facts and to make our judgments. I'm hopeful we can work it out in a collegial way with the administration. But if we can't, we're going to get to the bottom as to why we didn't get this report in a timely way [and] why these facts were censored..."

Recall that during this period the Bush White House was searching for a solution for funding stem cell research. It may be that Thompson and the White House were concerned that the report would make their job harder. As Spring turned to Summer and the administration crept toward a policy solution, it was in their interest to withhold the report, which would inevitably indicate the embryonic stem cell research holds great promise for scientific discovery. It is puzzling that the battle between Specter and the administration over the report, much less the overt censorship of scientific opinions, did not generate more interest from the media and the public. The handling of this report did foreshadow a pattern of scientific censorship in the Bush presidency, the most obvious manifestation being the manipulation of scientific opinion regarding climate change.⁴³

⁴³ See Daniel Sarewitz, "The Rightful Place of Science," *Issues in Science and Technology*, 25 (4): 89-94.

Stem Cells and Policy Entrepreneurship

Senator Arlen Specter cut his teeth on criminal justice policy. Richard Fenno's classic profile of Specter describes an individualistic, hardworking, former Philadelphia District Attorney turned Senator who struggled at times to learn how to navigate the legislative process. Fenno followed Specter through his first term and the passage of the "Armed Career Criminal Act of 1984," the signature achievement of his first term in the Senate. Using his position on the Senate Judiciary Committee, Specter initiated hearings on topics likely to spark an interest like parental kidnapping, child sex abuse, and pornography. None of these issues captured the public's imagination. David Shribman, writing in the *Wall Street Journal* near the end of Specter's first term concluded that Specter's "legislative achievements are limited, and he seems to have failed to win the trust of his colleagues. The result is Mr. Specter's reputation among his colleagues [is]...as a legislative show horse rather than a workhorse."⁴⁴ At the beginning of his second term, Specter admitted to Fenno that he was "groping to find a major, substantial issue that could become the subject an investigation...I want to find something that would command attention...I'm trying to find something that will have a substantial impact."⁴⁵

During his first term, Specter sought to make his mark on the Judiciary Committee. He was a natural for the committee. A lawyer and former District Attorney, the work of the committee meshed well with his expertise. However, his initial committee assignments included a seat on the Senate Appropriations Committee, and assignment to its Subcommittee on Labor, Health, and Human Services. In 1988 Specter was suddenly thrust into the position of Ranking Republican on the Labor, Health, and Human Services Subcommittee (Labor-H). Senator Lowell Weicker (R-CT) was defeated for reelection in 1988, and the three of the senior Republicans ahead of Specter on the committee chose to remain in

⁴⁴ David Shribman, "Sen. Arlen Specter Succeeds in Getting Headlines in an Effort to Boost his Prospects for Reelection." *Wall Street Journal* October 25, 1985

⁴⁵ Richard F. Fenno, Jr., *Learning to Legislate: The Senate Education of Arlen Specter*, Washington: CQ Press, 1991, p. 138.

their positions: Hatfield (OR) as ranking member of the committee, Ted Stevens (AK) as ranking member of the Defense subcommittee, and Warren Rudman (NH) as ranking member on Commerce subcommittee.

[SEE TABLE 1]

Despite his minority status, Specter could count on a strong working relationship with Democratic Subcommittee Chair, Tom Harkin (IA)—who similarly leapfrogged into the Chair of Labor-H in the 101st Congress—to help shape the committee’s agenda and hone his talent for directing appropriations toward Pennsylvania.⁴⁶ As Chair or Ranking member of Labor-H from 1988 to 2010, Specter (along with Harkin) could exercise control over resource allocation, aiming additional resources toward policy issues of interest to the two men. Importantly, funding for the National Institutes of Health (NIH) falls in the jurisdiction of Labor-H. Specter and Harkin, along with their House counterparts John Porter (R-IL) and David Obey (D-WI), the lawmakers set their sights on improving funding for NIH. Beginning in the 104th Congress, the four men—with the support of their respective leaderships—embarked upon an effort to double the budget for NIH over five years, a bold goal given the tight fiscal policies set by House Republicans and the Clinton White House.

On November 6, 1998, the New York Times ran a headline on its front page: “Scientists Cultivate Cells at the Root of Human Life.” According to the story “researcher hope to use the cells to grow tissue for human transplants and introduce genes into the body to remedy inherited disease.” The news of this

⁴⁶ “Arlen always said it was a seamless transfer [from majority to minority] because we worked very closely together and we had professional staff that would work for him and then when I took it over they would work for me...Arlen and I saw very eye-to-eye on the basic funding things we were doing on Health, Education, Human Services. I don’t think there were too many things that we really disagreed on...” Interview with the author, December 2015. . Senator Specter does recall some discord in the relationship late in his career, *Life Among the Cannibals*, 228-229.

breakthrough likely would dominate the front page if it were not for House Republicans' midterm losses and the teetering fortunes of (soon to be former) Speaker Newt Gingrich.⁴⁷

Senator Arlen Specter seized on the issue. Using his position as Chair of the Senate Appropriations Subcommittee on Labor, Health, and Human Services (Labor-H), he scheduled a hearing on stem cell research and its potential medical benefits for December 2, 1998. That hearing was the first of 21 hearings he held on the subject of stem cells over the next ten years. A cancer survivor, Specter had a personal interest in the development of potential new therapies of all sorts. As Chair of the subcommittee with jurisdiction over the National Institutes of Health, a primary locus of funding for medical research, helped to control the purse strings that would fund any research. As a Senator from Pennsylvania—home of the University of Pittsburgh and the University of Pennsylvania, which received considerable NIH funding—Specter had an interest in funding research that might result in funding and help develop Pennsylvania into a leader in biomedical research and treatment.

Two additional hearings in January allowed Specter to bring pressure on the Department of Health and Human Services to develop guidelines for stem cell research and research funding. The Dickey-Wicker amendment and strong anti-abortion opposition to the destruction of human embryos were the main to funding stem cell research. Concerned with the slow pace policy development at HHS, Specter and Harkin included language in their Labor-H funding bill that allowed the derivation of embryonic stem cells using federal funds. Following extensive discussions with Committee Chair Ted Stevens (AK) and Majority Leader Trent Lott (MS), Specter and Harkin agreed to remove the language citing a promise from Lott that the Senate would consider authorizing legislation for stem cell research. Specter had leveraged his power on Labor-H to create an opportunity to introduce legislation that was more comprehensive.

⁴⁷ Nicholas Wade, "Hope for Transplants and Gene Therapy—Ethics at Issue," *The New York Times*, November 6, 1998, A 1.

Political Fortune: Attack of the Clones

In 2001, Senator Brownback along with House Republican Dave Weldon (FL), introduced a bill to outlaw cloning in all of its forms. Endorsed by the Bush White House, HR 2505 passed the House 265-162 in July 2001. This bill prohibited reproductive and therapeutic cloning with public and private funds. Receiving stem cells derived from cloned embryos would be subject to a fine (up to \$1 million) and imprisonment (up to 10 years) for anyone involved in cloning. It further banned the importation of any product derived from cloning. Former Presidents Ford and Carter, former First Lady Nancy Reagan, and 40 Nobel Laureates wrote to President Bush urging him to support therapeutic cloning. HR 2505 moved to the Senate where it was slowed by Jim Jeffords' party change, which tipped partisan control to Senate Democrats. With Democrats in charge and human cloning still only a theoretical possibility, Brownback's bill stalled in the Senate.

Further confounding the embryonic stem cell debate, November 26, 2001, Advanced Cell Technologies (ACT) announced that it created the first cloned embryo. Financed with private money, ACT paid women for their unfertilized eggs. They removed the genetic material from the egg, inserting an adult cell, which carries all of the genetic information of the cell donor and none of the woman's genetic information. ACT's first attempts at cloning were unsuccessful. Cells began dividing but stopped days before stem cells began producing. However, the fact that ACT was able to begin the process of cell division using the same approach that produced Dolly, the first cloned sheep, unnerved many. ACT did not advocate attempting to transfer the embryo to a human womb, which could produce a genetic copy of the cell donor (reproductive cloning). Rather, they sought a means to generate stem cells using embryos that would not develop into viable human fetuses. Dr. Michael D. West, ACT's CEO, argued that since the embryos had no chance to develop fully, destroying the cells to harvest the stem cells would not face the ethical objections of anti-abortion advocates. An added benefit to this approach is that stem cell therapies derived from the donor patient's cells would not be rejected by the body.

Senator Specter understood the threat posed by the news of cloned embryos. The next day he took to the floor of the Senate to announce his opposition to reproductive cloning and his support for somatic cell transfer cloning. He quickly moved to hold a hearing on therapeutic cloning, just days later. Then, in late January Specter and Harkin introduced S. 1893, which was intended to ban human reproductive cloning while protecting therapeutic cloning research. After some negotiations, two senators joined forces with Democratic Senators Ted Kennedy (MA) and Dianne Feinstein (CA), and Republican Orrin Hatch to introduce S. 2439, a bill with bipartisan support for therapeutic cloning.

The bipartisan cloning bill allowed for therapeutic cloning while providing controls on reproductive cloning. The bill prohibited transferring technology to a country that has not banned reproductive cloning and provided for separate *in vitro* fertilization and nuclear transplantation laboratories. The legislation prohibited transplanting a nucleus into a fertilized egg. It contained a provision to prevent “embryo farms” by requiring that embryos produced through nuclear transplantation could not be maintained for more than 14 days. Cell differentiation does not begin until day 15. Senate supporters of stem cell research were prepared to argue that Brownback’s cloning bill was on par with disproven pseudoscience and religious extremism. Among the examples prepared for Specter was scientific objections to rail travel. “In the 1820s, Dr. Dionysus Lardner, Professor of Natural Philosophy and Astronomy at University College, London, stated that ‘Rail travel at high speed is not possible because passengers, unable to breathe, would die of asphyxia.’”⁴⁸

Science policy rarely becomes a cause célèbre. Cloning, briefly, captured the public imagination. During the debate over President Clinton’s health care reform bill, the Health Insurance Association of America contracted consultants Claussen-Goddard to create an ad campaign aimed at pressuring Congress to modify the bill to include provisions benefitting smaller insurers. What they came up with

⁴⁸ Memo, “Talking Points on the Nuclear Transplantation Substitute Amendment,” June 12, 2002 Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Health Group, Box 20, Folder 15, “Stem Cell Research, 2002-2003.”

were the “Harry and Louise” ads that are often credited with sinking Clinton’s plan. They featured a middle-aged married couple at a kitchen table discussing their concerns about the bill. In a pre-internet world, they went “viral.” Advocacy group ResearchNow! contracted Claussen-Goddard to reprise the ads with a focus on defeating the Brownback-Landrieu (anti-cloning) bill in the Senate.⁴⁹ The group bought time during an episode of “The West Wing,” a popular TV show at the time, to air their ad. Anti-abortion groups created ads targeted on pro-life supporters of stem cell research, like Orrin Hatch, and undecided Senators like Tim Johnson (D-SD), with radio ads. Featuring the characters Harriet and Louis, the ads ended on this dramatic note: “LOUIS: Harriet, your sister is here. HARRIET: Sister? I don’t have a sister.” The ads fed the popular notion that cloning would, or could, produce identical human beings.

This first battle over cloning ended with a whimper. When Senator Harry Reid offered a unanimous consent agreement allowing the Specter and Brownback bill to go head-to-head—as agreed during the battle over LHHS funding at the end of the previous year—Brownback objected to the order of amendments. Brownback effectively killed the Specter bill. While Specter did not prevail, he prevented the Brownback bill from moving forward ensuring that for the time being therapeutic cloning was safe from congressional interference, for the time being.

The Stem Cell Research Act

On January 31, 2000, Specter introduced S. 2015, “The Stem Cell Research Act of 2000.” Specter introduced variations on this legislation several times between 2000 and 2007. The bill passed both chambers in 2006 and 2007, drawing vetoes from President George W. Bush both times (the 2006 veto was the first of the Bush Presidency). Specter’s bill never became law. It is important because of what it accomplished in the Senate, in Congress, and the broader political environment. Political science does not like to make much of “failure,” unless that failure results in ultimate success. Specter’s Stem Cell Research Act provided a bulwark against legislative efforts of social conservatives that would restrict

⁴⁹ The ad is archived [here](#).

stem cell research. Close examination of Specter’s legislation provides considerable insight into the politics surrounding stem cell research.

Specter used his institutional position to schedule hearings that could help to keep stem cell research in the spotlight and frame the stem cell issue for the public. His talent for gaining media attention—described by Fenno and credited by Specter as a source of his first legislative success with the crime bill—was on full display. Specter’s first hearing in 2000 featured the actor Christopher Reeve who became a quadriplegic when he fell from a horse and damaging his spine. Stem cells, Reeve testified on April 26, 2000, might be the key to helping people like him regain some use of their bodies. Bringing Reeve and other less well-known victims of injury and disease humanized the potential value of stem cells. In an op-ed in *The Hill*, Specter wrote that because of the unique qualities of stem cells the “become a variable fountain of youth.”⁵⁰

[SEE FIGURE 3]

Consistent with his earlier promise, Majority Leader Trent Lott requested unanimous consent on the Senate floor to consider S. 2015 in September 2000. Senator Sam Brownback (R-KS) objected, effectively killing Specter’s legislation for the year. Senator Brownback was Specter’s chief antagonist in the Senate. Elected to the House in the Republican wave election of 1994, Brownback was elected to the Senate from Kansas two years later, serving until 2011 when he was elected Governor of Kansas. A staunch opponent of abortion, Brownback served on the Senate Appropriations Committee, though not on the Labor-H subcommittee. In April of the following year, Specter reintroduced the Stem Cell Act to authorize embryonic stem cell derivation and research. Brownback filed 54 amendments to the bill laying a parliamentary minefield for supporters of stem cell research.

One of the challenges of building a consensus on embryonic stem cell research is how supporters and opponents frame the issue. Issue framing provides a cognitive heuristic; a means for

⁵⁰ Arlen Specter, “Stem cells: a veritable fountain of youth,” *The Hill*, March 22, 2000, p. 34.

individuals to understand a complex issue in a manner that it fits with the preexisting beliefs of the individual. Anti-abortion forces typically define a fetus as existing from the moment of conception, when a human egg is fertilized by a human sperm: “Human life beings at conception (or fertilization) when the sperm and egg unite. This is not opinion but biological fact. The human embryo is a stage of life, like adolescence or adulthood. Embryos, whether created through in vitro fertilization or sexual intercourse, are fully human and deserve protection.” Those who wish to use surplus embryos created through in vitro fertilization are killing a human being. Supporters of embryonic stem cell research argue that surplus embryos that would otherwise be discarded or go unused present an opportunity for scientific advance, an opportunity to cure disease.

In Fenno’s study of Specter, he observes that during Specter’s first term he came to appreciate the importance of building coalitions in the Senate. Coalition building consists of more than identifying like-minded legislators. One has to build external support, deploy external allies to convince potential coalition members and work directly to persuade potential supporters. Senator Specter invested a considerable amount of time and effort—his and his staffs’—into this process. Everyone was a potential ally. In July 2001, Specter convinced 13 Senators to sign a letter to President Bush supporting stem cell research.⁵¹ When Specter and Harkin unveiled their stem cell legislation for the 107th Congress, the original co-sponsors included Republican Senators Lincoln Chafee and Gordon Smith, and Democrats Fritz Hollings (SC) and Harry Reid (NV). Ultimately, the number of co-sponsors grew to 16.

[SEE FIGURE 4]

⁵¹ The letter was signed by Republican Senators Specter, Gordon Smith, Strom Thurmond (SC), Susan Collins (ME), Lincoln Chafee (RI), Ted Stevens, Olympia Snowe (ME), Kay Bailey Hutchinson (TX), Ben Campbell (CO), Orrin Hatch, Richard Lugar (IN), John Warner (VA), and John McCain (AZ). Letter to the president July 20, 2001. Arlen Specter Senatorial Papers, TJU.2010.01.01, Thomas Jefferson University (managed by the University of Pittsburgh Library System). University of Pittsburgh, Health Care Group, Box 20, Folder 27, “Stem Cell Research Support, 1999-2005.”

One of Specter's accomplishments was building support among respected anti-abortion conservatives for stem cell research without excluding the views of research opponents like Brownback. At a hearing in July 2001, Senators Bill Frist (R-TN), Orin Hatch (R-UT), Gordon Smith (R-OR), and Brownback appeared before the subcommittee. Senator Smith delivered impactful testimony of the day. A Mormon and relative of the Udall family, he recounted the many members of his family who were victims of Parkinson's disease, a condition potentially treatable with stem cells. He continued, "I believe that life begins in a mother's womb, not in a scientist's laboratory...For me, being pro-life means helping the living as well. So if I err at all on this issue, I choose to err on the side of hope, healing, and health." By including embryonic stem cell opponent Brownback, Specter illustrated the need to consider conflicting and alternative views when crafting legislative solutions.

Specter and the forces arrayed in support of stem cell research won their biggest victory with the passage of the Stem Cell Research Enhancement Act of 2005, four years after Specter filed his original legislation. In contrast to the ordinary view that a member of Congress introduces a bill and "yatta-yatta-yatta"⁵² there is a law, it took more than five years of legislative blood, sweat, and toil on the part of legislators and their staff to achieve victory. The groundwork laid by the political entrepreneur can "soften up" public opinion and other potential supporters creating an environment for success.

The polling firm Gallup started asking respondents whether they considered embryonic stem cell research to be "morally acceptable" or "morally wrong." In 2002, 52% of the public considered the research morally acceptable to 39% who responded that it was morally wrong. By 2006 the figures were 61% and 30%, respectively. This suggests that a non-trivial increase in support for embryonic stem cell research, and an equally large decline in moral opposition. Between 2001 and 2005 respondents who

⁵² Insert the textbook example of "how a bill becomes a law" here.

watching the issue closely or somewhat closely increased from 38% to 58%. The public was “tuning in,” and they were becoming “morally comfortable” with embryonic stem cell research.⁵³

[SEE FIGURE 5]

Heading into the 2006 midterm elections Republicans were nervous. President Bush’s approval rating had dropped from 51% at the time of his second Inauguration in 2005 to 31% by the last poll before the midterm. The ill-advised Iraq War continued, and presidents typically lose larger numbers of congressional seats during their second midterm election.⁵⁴ Most experts predicted 30-40 Republican losses in the House, which would make Democrats the majority. House Republicans, by bringing up the stem cell bill under the threat of a veto by Bush, with a real possibility of passage, indicates that they felt it necessary to illustrate their independence from the Bush White House.

The primary sponsor of H 810, Mike Castle (R-DE), was one of the most vulnerable House Republicans. One of the last moderate Republicans elected from the Northeast, Mike Castle assembled 200 co-sponsors for the bill including 23 Republicans. The legislation passed 238 to 194. Fifty Republicans voted with 187 Democrats and one independent in favor, while 14 Democrats joined 180 Republicans to oppose the bill. Supporters were well short of the number of votes necessary to override Bush’s veto. In the Senate the bill passed easily, 63 to 37, with 19 Republicans joining all but 1 Democrat who voted against the bill. As Bush cast his veto, 68% of Democrats, 62% of independents and 51% of Republicans felt that embryonic stem cell research was morally acceptable.⁵⁵

The “easy” passage of the Stem Cell Research Act of 2005 owed a lot to the work of Specter, other members of Congress, and advocacy groups that helped to shape public opinion, turning it from

⁵³ Gallup, “Stem Cell Research,” available <https://news.gallup.com/poll/21676/stem-cell-research.aspx>. Accessed January 2019.

⁵⁴ Gallup, “Presidential Approval Ratings—George W. Bush,” available <https://news.gallup.com/poll/116500/presidential-approval-ratings-george-bush.aspx>. Accessed January 2019.

⁵⁵ Gallup, Stem Cell Veto Contrary to Public Opinion, available <https://news.gallup.com/poll/23827/stem-cell-veto-contrary-public-opinion.aspx>. Accessed January 2019.

lukewarm to high levels of support. In 2018, two-thirds of Americans believed that embryonic stem cell research was morally acceptable.

Summary and Conclusion

On March 9, 2009, President Barak Obama reversed the Bush Executive Order limiting federal funding of stem cell research. Shortly after that Dr. James Sherley filed a suit in federal court against NIH and HHS Director Kathleen Sebelius arguing that Obama's Executive Order violated the Dickey-Wicker amendment. In 2011, the US District Court for DC ruled in favor of Sebelius, upholding Obama's order. When the Supreme Court declined to hear the case on appeal in 2013, federal funding for stem cell research remained safe, pending legislative action by Congress. In his written opinion, Judge Lambeth writing for the majority stated that "The NIH reasonably concluded, as expressed in the notice of proposed rulemaking, that the fundamental policy question of whether to provide federal funds for embryonic stem cell research wasn't a question for it to decide. That policy question is not answered by any Congressional law, and *it has fallen on three Presidential administrations to provide an answer. For all three such administrations, Democratic and Republican, the answer has been to permit federal funding. They have differed only as to the path forward.*"⁵⁶

Given Bush's original decision to support limited funding for embryonic stem cell research, Judge Lamberth's argument is ironic, casting Bush's decision on the side of both Clinton and Obama for the propriety of funding embryonic stem cell research. However, given that the policy status quo rested on Obama's executive order, funding for research teeters on decisions being made by the Trump Administration. Beginning in September, the Trump Administration began its review of federally funded stem cell research.

⁵⁶ *Sherley v. Sebelius*, US District Court for the District of Columbia, Case 1:09-cv-01575-RCL, July 27, 2011, p. 37. *Emphasis added.*

The fact that Congress failed to legislate limits on funding suggests the degree to which Senator Specter succeeded in preventing the restrictions envisioned by embryonic stem cell research opponents. Examining public opinion and content analysis of media Marzotto and Alt conclude that “while the scientific community continues to look for a cure, the public no longer expects an instant fix. As public interest in the issue has declined, media coverage is now more about science and less about [the] controversy.”⁵⁷ One could reasonably conclude that the efforts of political entrepreneurs like Specter and allied policy entrepreneurs outside of Congress were successful in “normalizing” embryonic stem cell research, establishing a policy status quo that will be difficult to undo.

⁵⁷ Toni Marzotto and Patricia M. Alt, “The Ups and Downs of Stem Cell Research: The Impact of Policy Uncertainty,” *Journal of Health and Human Services Administration*, 35 (3), pp. 331–351, 2012

Table 1: Senator Arlen Specter's Subcommittee Assignments on Appropriations

Congress	Years	Majority	Seniority	Subcom 1	Subcom 2	Subcom 3	Subcom 4	Subcom 5	Subcom 6
97th	1981-82	Rep	15/15	Agriculture (7/7)	D.C. (3/3)	Foreign Ops (5/5)	Labor-H (7/7)	HUD (5/5)	
98 th	1983-84	Rep	14/15	Agriculture (7/7)	D.C. (1/3)	Foreign Ops (5/5)	Labor-H (5/7)	Commerce (5/5)	
99 th	1985-86	Rep	14/15	Agriculture (7/7)	D.C. (1/3)	Foreign Ops (5/5)	Labor-H (5/7)		
100 th	1987-88	Dem	10/13	Agriculture (4/5)	Energy & Water (6/6)	Foreign Ops (5/6)	Labor-H (4/6)	MilCon (1/3)	
101 st	1989-90	Dem	9/13	Agriculture (4/5)	Energy & Water (6/6)	Foreign Ops (5/6)	<i>Labor-H (1/7)*</i>	Defense (8/8)	
102 nd	1991-92	Dem	8/13	Agriculture (3/5)	Energy & Water (5/6)	Foreign Ops (5/6)	<i>Labor-H (1/7)</i>	Defense (7/8)	
103 rd	1993-94	Dem	5/13	Agriculture (2/5)		Foreign Ops (3/6)	<i>Labor-H (1/7)</i>	Defense (4/8)	
104 th	1995-96	Rep	4/15	Agriculture (2/5)	Transportation (3/6)	Foreign Ops (2/7)	Labor-H (1/8)	Defense (3/9)	
105 th	1997-98	Rep	3/15	Agriculture (2/6)	Transportation (3/7)	Foreign Ops (2/7)	Labor-H (1/8)	Defense (3/9)	
106 th	1999-2000	Rep	3/15	Agriculture (2/6)	Transportation (2/7)	Foreign Ops (2/7)	Labor-H (1/8)	Defense (3/9)	
107 th	2001-02	Rep/Dem**	3/14	Agriculture (2/6)	Transportation (2/6)	Foreign Ops (2/7)	<i>Labor-H (1/7)</i>	Defense (3/8)	
108 th	2003-04	Rep	3/15	Agriculture (3/8)	Transportation (2/8)	Foreign Ops (3/8)	Labor-H (1/8)	Defense (3/10)	Homeland (3/8)
109 th	2005-06	Rep	3/15	Agriculture (3/8)	Transportation (2/10)	Foreign Ops (2/8)	Labor-H (1/8)	Defense (3/9)	Homeland (4/9)
110 th	2007-08	Dem	3/14	Agriculture (3/7)	Transportation (3/9)	Foreign Ops (3/7)	<i>Labor-H (1/7)</i>	Defense (3/9)	Homeland (4/8)
111 th	2009-10*	Dem					<i>Labor-H (1/7)</i>		
111 th	2009-2010	Dem	18/18	Agriculture (10/10)	Transportation (12/12)	Foreign Ops (9/9)	Labor-H (9/9)	Defense (11/11)	Homeland (9/9)

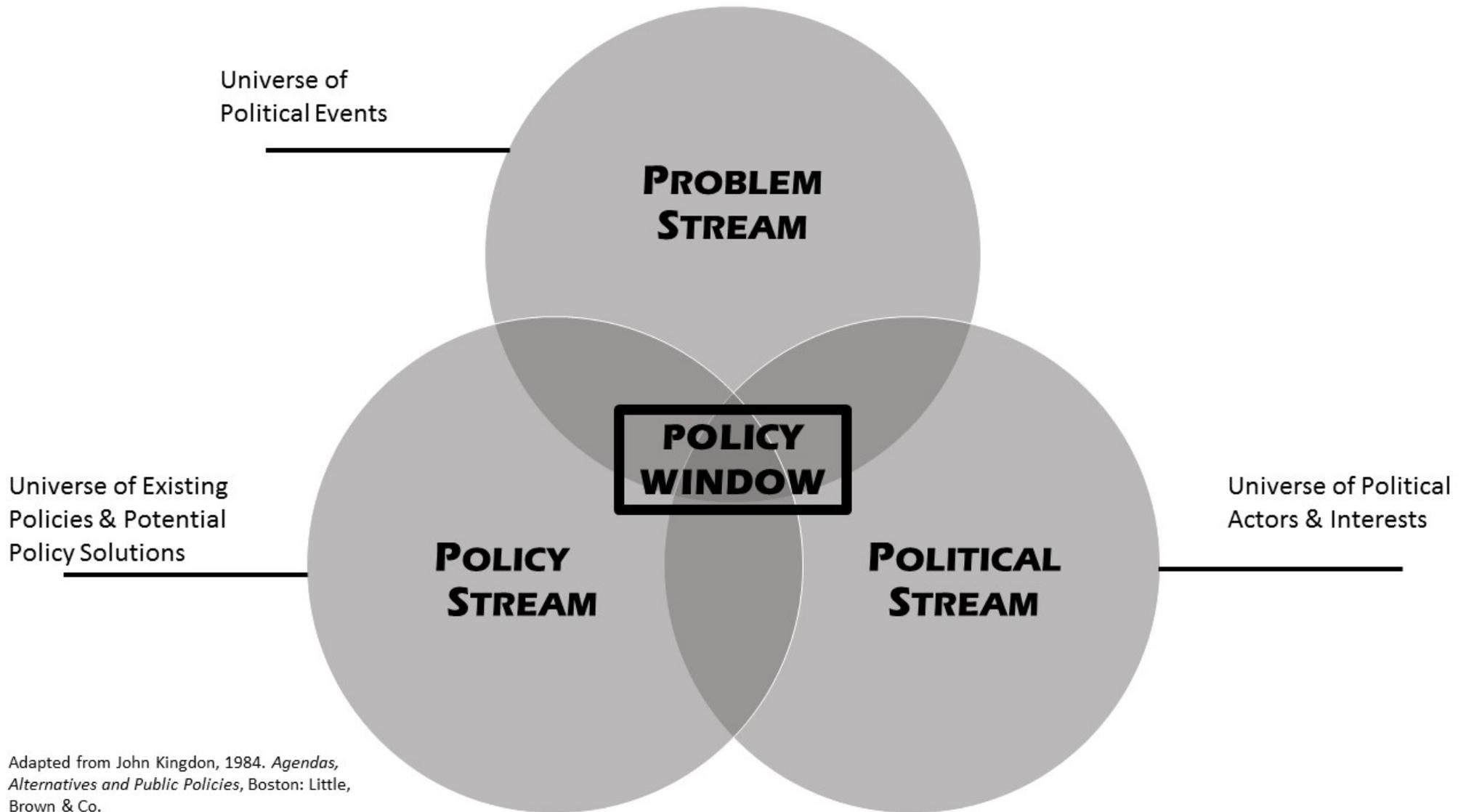
* April 28, 2009, Arlen Specter switches parties

** In the 107th Congress party control switched to Dems June-July 2001

Numbers in parentheses indicate Specter's rank among Republicans on the subcommittee.

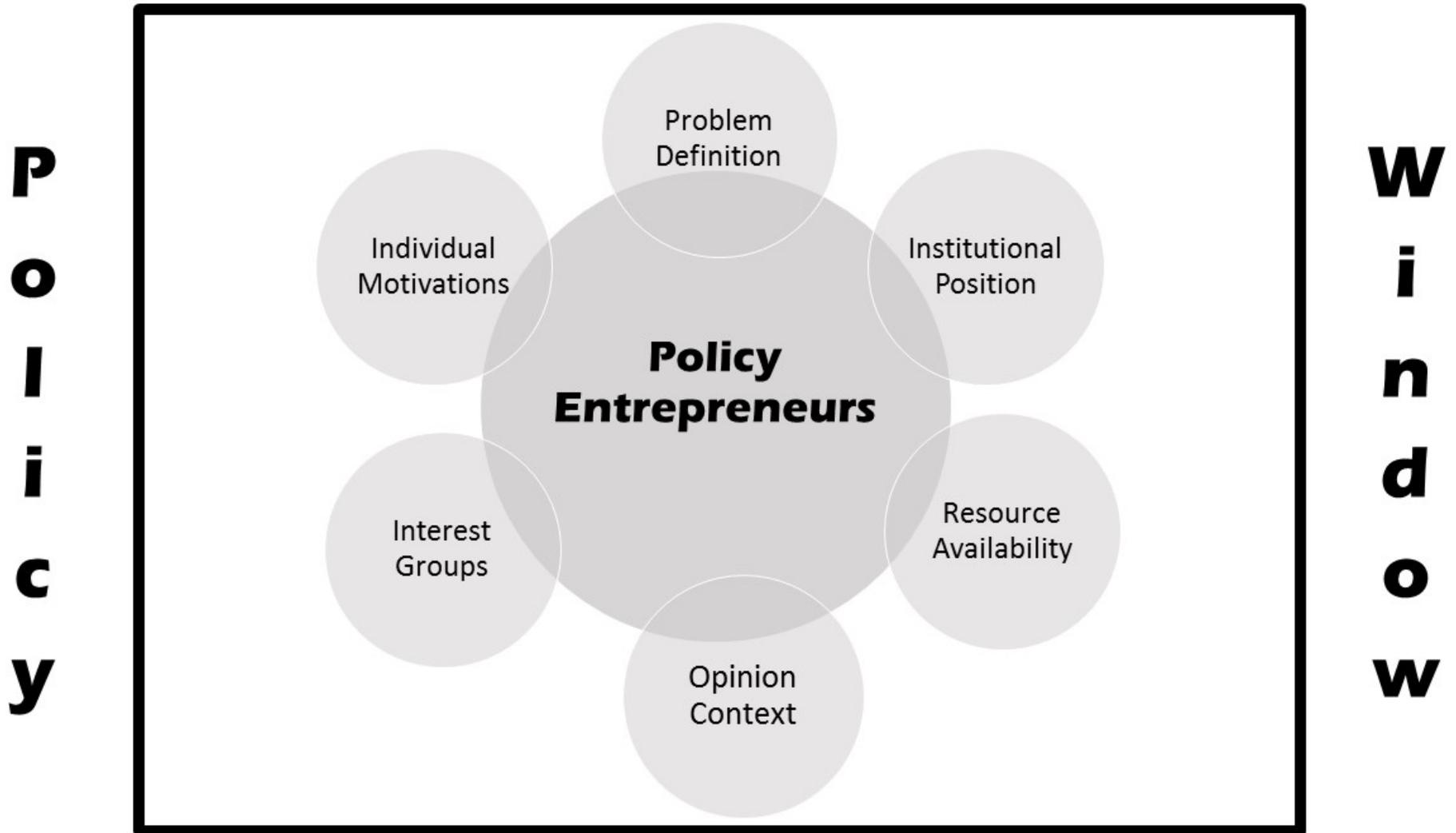
BOLD=Specter Chair of Subcommittee

Figure 1: Kingdon's Hueristic



Adapted from John Kingdon, 1984. *Agendas, Alternatives and Public Policies*, Boston: Little, Brown & Co.

Figure 2: Policy Windows and Policy Entrepreneurs



Adapted from John Kingdon, 1984. *Agendas, Alternatives and Public Policies*, Boston: Little, Brown & Co.

Figure 3

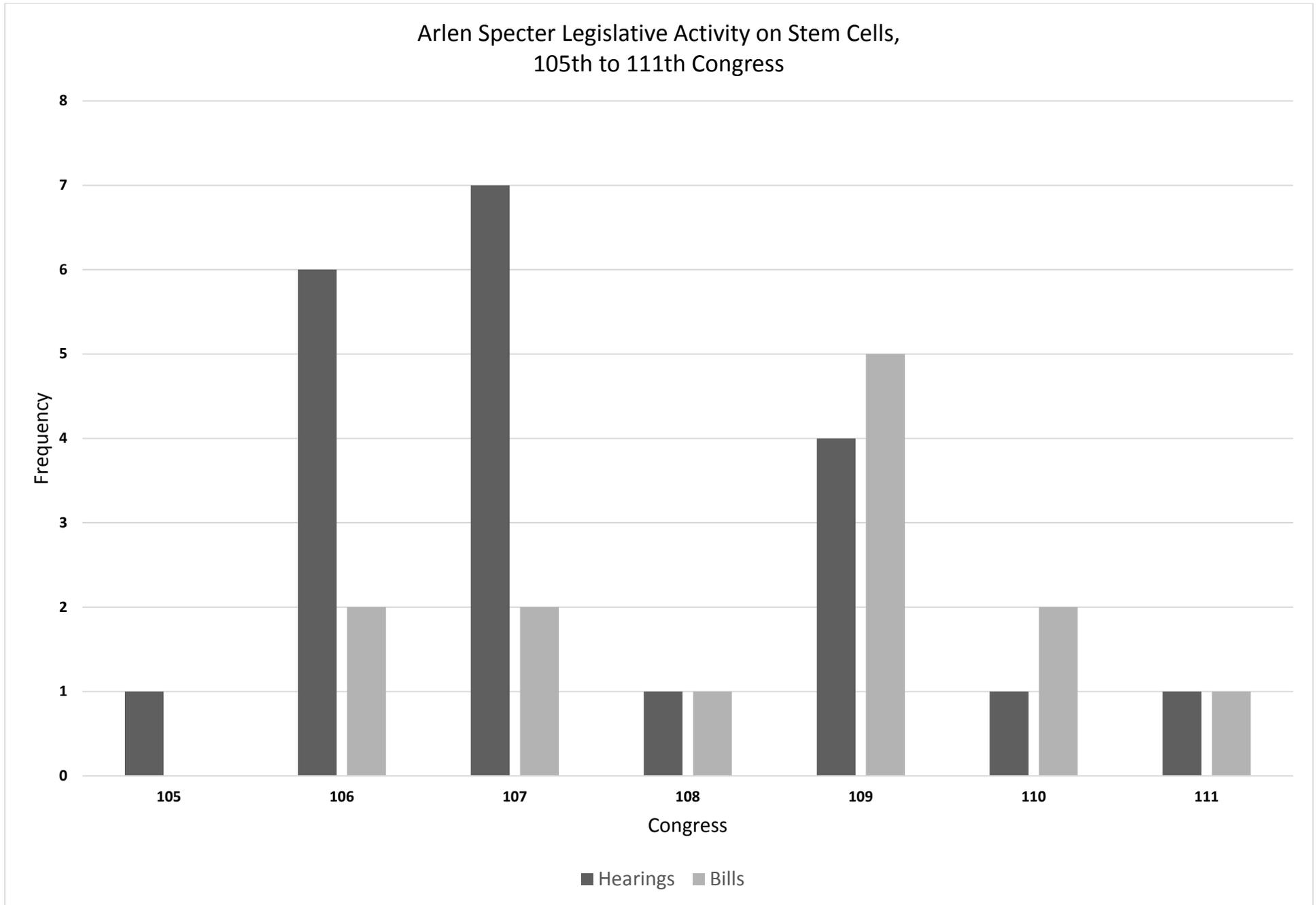


Figure 4

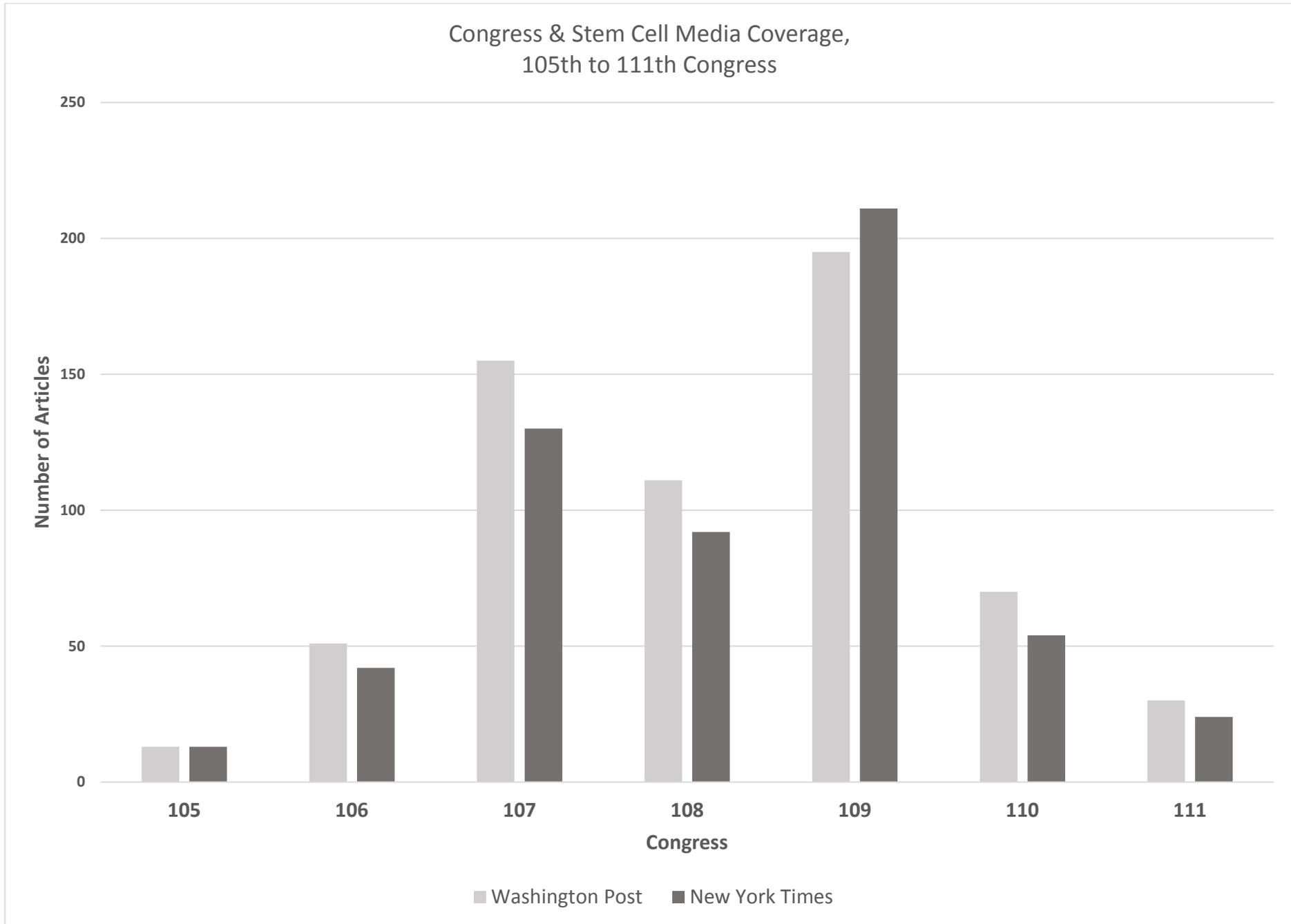


Figure 5

